

Update: Juvenile Justice Benchbook (Revised Edition)

CHAPTER 2

Jurisdiction, Transfer, and Venue

2.17 Transfer of Jurisdiction in Status Offense and “Wayward Minor” Cases Involving Indian Children

A. Determining the Applicability of the Indian Child Welfare Act and MCR 3.980 in a Specific Case

On page 38 immediately before subsection (B), insert the following text:

An “Indian tribe” means “any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary [of the Interior] because of their status as Indians[.]” 25 USC 1903(8). The court determines whether a tribe is an “Indian tribe.” *In re NEGP*, 245 Mich App 126, 133-34 (2001).

In *In re Fried*, ___ Mich App ___, ___ (2005), the respondent claimed that the trial court erred in failing to apply ICWA to the proceedings because the child was eligible for membership in the “Lost Cherokee Nation.” The Court of Appeals held that “because the tribe to which respondent belongs is not a tribe recognized as eligible for services provided to Indians by the Secretary of the Interior, it is not an ‘Indian tribe’ within the meaning of the ICWA. 25 USC 1903(8), (11).” *Fried, supra*.